**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1568 OF 2004

The New India Assurance Company Ltd.
having its Head and Registered office at
New India Assurance Building 87, M. G. Marg,
Fort Mumbai Branch office and Divisional
office at Aurangabad … Appellant
[Orig. Respondent No.3]

Versus

1. Dashrath s/o Shankar @ Senfad Thathe
Age: 39 years, Occu: Agril
R/o: Gevrai Semi,
Tq. Sillod, District Aurangabad

2. Baban Ramrao Shinde
Age: Major, Occu: Driver
R/o Aland, Tq. Sillod,
District Aurangabad

3. Sanjay Ganeshlal Darakh
Age: Major, Occu: Owner of Vehicle
R/o Borgaon Arj.
Tq. Sillod, Dist. Aurangabad … Respondents
[Original Claimant]

…
Mr. Mohit R. Deshmukh, Advocate for the Appellant
…

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 07.06.2023

JUDGMENT :

1. The appellant / insurance company impugns the judgment and award dated 26/08/2004, passed by the Motor Accident Claims Tribunal, Aurangabad [for short 'the Tribunal'], in Motor Accident Claim Petition

(MACP) No.51/2000 in this appeal, filed under Section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short].

2. The respondent no.1 / original claimant had approached the Tribunal under Section 166 of the Act, thereby raising the claim for compensation of Rs.70000/- towards injury suffered by him in a motor vehicular accident dated 14/11/1999. The claimant contends that he was traveling in matador bearing registration no. MH20-W-5298 from Gevrai towards Sillod. The vehicle toppled owing to negligence of driver. The claimant suffered accidental injuries. The claimant contends that, he was admitted to Rural Hospital, Sillod and thereafter, he was hospitalized at Medical College and Hospital at Aurangabad for 4 to 5 days.

3. The claimant recorded his own evidence and relied upon police papers. The appellant / insurance company resisted the claim on the ground that, the claimant was travelling as gratuitous passenger in goods carriage and risk of such passenger was not covered under the insurance policy. The Tribunal on consideration of the pleading and evidence passed an award for Rs.15000/- in favour of the claimant.

3. The learned Advocate Mr. Deshmukh appearing for the appellant / insurance company would submit that, the Tribunal failed to consider specific defense raised by the insurance company and also did not apply parameters of law in its proper prospective while fixing the liability to pay the compensation jointly and severally against the respondents. He would submit that, since the claimant was passenger in goods carriage, no liability ought to have been fastened against the insurer.

4. The learned Advocate appearing for the respondents vehemently opposed the contention and supported the award. He would submit that, the appellant / insurer has deposited the awarded amount of Rs.15000/-

in this Court and claimant has been permitted to withdraw the same vide order dated 27/10/2015. He would further submit that meager amount of Rs.15000/- has been awarded though the claimant had suffered the injuries requiring hospitalization for more than four days.

5. Having considered the pleadings and evidence on record along with submissions advanced by the respective parties, it can be gathered that, the claimant was travelling along with two bags containing vegetables and boarded for carriage of goods. True that, such statement is not supported in the pleading. The cross examination carried out on behalf of the insurance company do not show that they have denied the insurance coverage in respect of the claimant. The Tribunal has taken a plausible view based on discernable material. The compensation amount is already disbursed. Considering the meagre amount involved, this is not a fit case to interfere in the award passed by the Tribunal in exercise of appellate jurisdiction of this Court. Hence, appeal is **dismissed** with costs.

(S. G. CHAPALGAONKAR, J.)

Sameer